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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CAREPARTNERS, LLC, et al,

10 Plaintiffs,

11 vs.

12 PAT LASHWAY, et al,

13 Defendants.

NO. C05-1104RSL

ORDER DENYING MOTION TO AMEND

14 **I. INTRODUCTION**

15 This matter comes before the Court on “Plaintiffs’ Motion to Amend Complaint” (Dkt.
16 #119). Plaintiffs seek to amend their complaint to add two new constitutional claims. For the
17 reasons discussed below, plaintiffs’ motion to amend is denied.

18 **II. PROCEDURAL BACKGROUND**

19 Plaintiffs first filed their complaint on June 17, 2005 (Dkt. #1). This complaint contained
20 no mention of either a vagueness or an equal protection claim. On September 23, 2005, the
21 Court permitted defendants to propound contention interrogatories that would enable them to
22 determine the precise scope of the constitutional rights at issue. See Dkt. #9. In doing so, the
23 Court specifically noted the importance of resolving “immunity questions at the earliest possible
24 stage of litigation in order to protect defendants from potentially unnecessary and burdensome
25 discovery proceedings.” Id.

26 Plaintiffs responded to these contention interrogatories on February 3, 2006. In response
27 to the question of what specific constitutional violations were being alleged, plaintiffs answered

1 as follows:

2 With respect to each plaintiff, please note that the federally protected rights
 3 are all rights referenced within plaintiff's complaint, inclusive of plaintiff's
 4 Fourteenth Amendment right to procedural due process prior to the
 5 deprivation of his property interest in the license to operate Alderwood
 6 Assisted Living; the First Amendment rights to freedom of speech and
 7 petition; and rights relative to substantive due process, which generally
 8 speaking and discussed below, is predicated on the notion that the
 9 government cannot engage in arbitrary capricious and intentionally abusive
 10 conduct.

11 Declaration of Michael E. Tardif (Dkt. #41) at p. 7. Based on those responses, defendants filed
 12 a motion for summary judgment to resolve questions of qualified immunity. It was only in
 13 response to defendants' motion that plaintiffs first raised claims of vagueness and equal
 14 protection violations. Given plaintiffs' failure to include such allegations in their interrogatory
 15 responses and their failure to make any effort to amend their complaint or supplement their
 16 previous interrogatory responses, the Court refused to consider plaintiffs' new claims in its
 17 summary judgment order. See Order at pp. 17-18 (Dkt. #116). More than a year after first
 18 responding to defendants' contention interrogatories and more than two years after filing their
 19 complaint, plaintiffs now seek to amend their complaint to add these new constitutional claims.

16 III. DISCUSSION

17 Pursuant to Fed. R. Civ. P. 15(a), leave to amend "shall be freely given when justice so
 18 requires." There is, therefore, a "strong policy in favor of allowing amendment" after
 19 "considering four factors: bad faith, undue delay, prejudice to the opposing party, and the
 20 futility of amendment." Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994).

21 Evaluating plaintiffs' request under the factors identified in Kaplan, the Court denies
 22 plaintiffs' motion to amend. First, defendants' proposed amendment is unjustifiably late.
 23 Plaintiffs offer only one reason for their failure to include these new allegations in either their
 24 original complaint or interrogatory responses and that is that it was simply an oversight in legal
 25 research. See Memorandum at p. 6 n. 2. While such an argument may be persuasive in other
 26 contexts, the failure to add new constitutional claims to a complaint prior to the Court's
 27 resolution of qualified immunity issues cannot be justified by a claim of ignorance. Plaintiffs
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1 have been involved in litigation surrounding these claims since July 2003. They had more than
2 four months to respond to the contention interrogatories and an additional five months after that
3 to either amend their complaint or supplement their interrogatory responses prior to defendants'
4 completion of extensive summary judgment briefing on qualified immunity issues. They did
5 neither. Though there is no evidence to indicate that plaintiffs' delay was the result of bad faith,
6 it does appear that plaintiffs failed to make a good faith effort to adequately investigate all their
7 potential constitutional claims prior to responding to defendants' contention interrogatories.

8 "Undue delay by itself, however, is insufficient to justify denying a motion to amend."
9 Bowles v. Reade, 198 F.3d 752, 758 (9th Cir. 1999). Absent an additional finding of prejudice
10 to the defendants, bad faith by plaintiffs, or futility, the strong policy in favor of amendment
11 militates against such a denial. Id. (citing Howey v. United States, 481 F.2d 1187, 1191 (9th
12 Cir. 1973)). The Court finds that permitting plaintiffs to add new claims at this point in the
13 litigation would be unduly prejudicial. Qualified immunity is not merely a defense to liability
14 under Section 1983, it is an "entitlement not to stand trial or face the other burdens of litigation."
15 Saucier v. Katz, 533 U.S. 194, 200 (2001) (quoting Mitchell v. Forsythe, 472 U.S. 511, 526
16 (1985)). Permitting plaintiffs to withhold critical claims until after defendants' expended
17 considerable time and resources investigating and briefing qualified immunity issues would run
18 contrary to defendants' rights to have such questions promptly resolved. Amendment at this
19 stage in the litigation would subject defendants to the burden of investigating, researching and
20 litigating all new constitutional issues. Avoiding such unnecessary burdens was the reason the
21 Court required plaintiffs to clearly define all their constitutional claims at an early stage in the
22 litigation. With no reasonable justification for imposing such prejudice, plaintiffs' motion to
23 amend is denied.

IV. CONCLUSION

For all of the foregoing reasons, plaintiffs' motion to amend is DENIED.

DATED this 23rd day of April, 2007.

Mrs Lasnik
Robert S. Lasnik
United States District Judge